THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO.7736 OF 2005

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Dated: 22.08.2005

Between:

Nakka Konda Ramanna, S/o. Tirupathi Rao,
R/o. Peddapadu Village, Srikakulam Mandal, Srikakulam District.

..... PETITIONER

AND

1 The Joint Collector (Civil Supplies), Srikakulam and 2 others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

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ORDER:

This writ petition has been filed by the petitioner assailing the action of the 1st respondent-Joint Collector (Civil Supplies), Srikakulam, in not granting stay in the appeal preferred by him in S.R.A.NO.24 of 2005 S.2 against the order of the 2nd respondent-Revenue Divisional Officer, Srikakulam as arbitrary, illegal and violation

of principles of natural justice.

The petitioner is a fair price shop dealer of Peddapadu village, Srikakulam Mandal, Srikakulam District. On 13.02.2005, the Enforcement Deputy Tahsildar, DSO's Office, Srikakulam, surprised the shop of the petitioner and found certain deficiencies. The stock found in the shop of the petitioner came to be seized. A show cause notice dated 21.02.2005 came to be issued by the 1st respondent-Joint Collector, Srikakulam, to the petitioner calling upon him to explain as to why the seized stocks should not be confiscated to Government. Thereafter, the 2nd respondent-Revenue Divisional Officer, Srikakulam, initiated proceedings and kept the authorization of the petitioner under suspension by order dated 23.02.2005. Assailing the order passed by the 2nd respondent-Revenue Divisional Officer, Srikakulam, the petitioner filed an appeal before the 1st respondent-Joint Collector (Civil Supplies), Srikakulam, and moved stay application. Since no orders have been passed on the said application, the petitioner has filed this writ petition invoking the jurisdiction under Article 226 of the Constitution of India.

Heard learned counsel for the petitioner and learned Government Pleader for Civil Supplies.

Learned counsel appearing for petitioner submits that the suspension of authorization of the petitioner as dealer of Peddapadu village, Srikakulam Mandal, Srikakulam District, is not warranted in the circumstances of the case. In support of his submission, he placed reliance on the decisions of this Court in **"Dharani Trading Co. v. State of A.P.",** and **"G. Anjaneyulu v. Collector (CS), Joint Collector, Mahaboobnagar"**. It is useful to refer paragraph 4 of the 2nd cited judgment, which reads thus:

> "The proceedings under Section 6-A of the Act were initiated against the petitioner before the first respondent. Two charges, namely he was indulging in clandestine business in relation to the commodities meant for public distribution and that he misappropriated certain quantities of PDS rice and kerosene oil meant for the distribution in the month of August, 2004, were framed against him. The petitioner responded to the notice and submitted his explanation. Not being satisfied with the explanation offered by the petitioner, the first respondent directed confiscation of the commodities seized from the petitioner. If the petitioner feels aggrieved by the same, he has to avail the remedy of appeal provided for under Section 6-C of the Act. In addition to directing confiscation of the seized commodities, the first respondent

> directed that the petitioner be removed from the dealership of the fair price shop. In this context, it needs to be seen that appointment of dealers for fair price shops and other matters relating thereto are governed by the Control Order, 2001. The third respondent is the appointing authority. It is he who is conferred with the power either to appoint a person as a dealer or to cancel the dealership. Mere confiscation of essential commodities in the proceedings under Section 6-A of the Act cannot by itself result in cancellation of the dealership. For that purpose, separate and independent proceedings have to be initiated by the competent authority, viz., the third respondent. Clause 5(4) of the Control Order mandates that any such action shall precede a show-cause notice as well as an enquiry. Therefore, the direction issued by the first respondent for removal of the petitioner from dealership cannot be sustained."

Learned Government Pleader for Civil Supplies appearing on behalf of respondents submits that the proceedings initiated by the 1st respondent-Joint Collector, Srikakulam, for which show-cause notice was issued, were in respect of confiscation of seized stocks, whereas the proceedings initiated by the 2nd respondent-Revenue Divisional Officer, Srikakulam, related to the suspension of the dealership pending enquiry, and therefore, the 2nd respondent-Revenue Divisional Officer, Srikakulam, is justified in issuing the proceedings dated 23.02.2005 keeping the authorization of the petitioner under suspension. He further submits that the order, under which the authorization has been suspended, is not to be resorted to very lightly and in support of his submission reliance has been placed on a Division Bench judgment of this Court in **"K. Yerri Swamy v. C. Krishna Chowdary and others",** wherein, it has been held that the suspension of order of suspension of fair price shop dealership made by the Revenue Divisional Officer pending enquiry, when statutory appeal is pending before the Joint Collector is not permissible. The cited decision is squarely applicable to the facts of the case on hand.

Since the appeal, preferred against the proceedings dated 23.02.2005 of the 2nd respondent-Revenue Divisional Officer, Srikakulam, by the petitioner, is pending before the 1st respondent-Joint Collector (Civil Supplies), Srikakulam, I deem it appropriate to direct the 1st respondent-Joint Collector (Civil Supplies), Srikakulam, to dispose of the appeal of the petitioner within a period of one month from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. No order as to costs.

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(B. SESHASAYANA REDDY, J)

Date: 22.08.2005

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